Doc Code: AP.PRE.REQ

PTO/SB/SS (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
2404

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/667881	September 22, 2003

First Named Inventor
Manish Mangal

Art Unit	Examiner
2153	Yasin M. Barqadle

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 35,818

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/Lawrence H. Aaronson/
Signature

Lawrence H. Aaronson
Typed or printed name

312 913-2141
Telephone number

February 15, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant *(i.e.,* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE
(Sprint Docket 2404)

In re the Application of:	)	
	)	
Manish Mangal et al.	)	
	)	**Group Art Unit 2153**
Serial No.: 10/667,881	)	
	)	
Filed: September 22, 2003	)	
	)	
Conf. No. 1159	)	**Examiner: Yasin M. Barqadle**
	)	
For: METHOD AND SYSTEM FOR UPDATING NETWORK PRESENCE RECORDS AT A RATE DEPENDENT ON NETWORK LOAD	)	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REASONS FOR REVIEW OF FINAL REJECTION

Applicant requests review of the final rejection mailed October 17, 2007, because the Examiner has not set forth a sufficient basis for rejecting any of the claims.

Pending in this application are claims 1-17 and 19-26, of which claims 1, 4, 9, 14, 19, 20, 25 and 26 are independent and the remainder are dependent.

1. Clear Error in Rejecting Claims 1-17, 19, and 25-26

Of these claims, claims 1, 4, 9, 14, 19, 25, and 26 are independent and stand rejected as being allegedly anticipated by Adelman. Adelman clearly fails to anticipate these claims,

McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 913-0001

however, at a minimum because Adelman fails to disclose (expressly or inherently) using a determination of ***network load*** as a basis to select a keepalive period that is then sent to a client station ***in a response*** to a keepalive message, as recited in each of claims 1, 4, 9, 14, 19, 25, and 26.

In rejecting these claims, the Examiner asserted that Adelman teaches selecting a keepalive period based on ***network load***, because Adelman teaches selecting a keepalive period based on a measure of ***packet loss***. With all due respect, however, Applicant submits that this analysis by the Examiner is incorrect.

Adelman's disclosure of selecting a keepalive period based on a measure of ***packet loss***, does not expressly or inherently amount to a disclosure of selecting a keepalive period based on a measure of ***network load*** as recited in Applicant's claims, because packet loss does not expressly or inherently amount to network load.

First, packet loss does not expressly amount to network load but is rather a measure of the extent to which packets are lost.

Second, packet loss does not inherently amount to network load, because packet loss does not *necessarily* indicate network load. (*See* M.P.E.P. § 2112, stating that inherency requires the missing element to necessarily flow from the express teachings of the cited art.) In particular, a network can be very lightly loaded and yet experience a high rate of packet loss due to faulty routers or other equipment. Conversely, a network can be very heavily loaded and yet experience very little packet loss if network equipment is running smoothly. Indeed, Adelman itself explains that loss of packets indicates that a cluster member is malfunctioning or inoperative or that the network is having problems. Yet faults in the network do not *necessarily* relate to network load. Consequently, Adelman's teaching of selecting a keepalive period based

McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 913-0001

on packet loss does not amount to a teaching of selecting a keepalive period based on network load as recited in Applicant's claims.

Because the Examiner has relied exclusively on Adelman's teaching of using *packet loss* as a basis to select a keepalive period, and because that teaching does not meet Applicant's claim limitation of using *network load* as a basis to select a keepalive period, the Examiner has clearly erred in rejecting claims 1, 4, 9, 14, 19, 25, and 26.

Furthermore, Applicant respectfully requests the panel to review the arguments set forth in Applicant's Response After Final (filed December 11, 2007). There, Applicant explained that the Examiner erred as well in rejecting claims 1, 4, 9, 14, 19, 25, and 26, because Adelman fails to teach sending the selected keepalive period "in a response" to a received keepalive message. At best, Adelman teaches a master determining a keepalive period based on information in a received client-keepalive message. However, Adelman does not teach sending that determined keepalive period "in a response" to the received client-keepalive message. Rather, Adelman teaches that the determined keepalive period is sent in a next ***periodic*** master-keepalive message. As the master-keepalive message is sent periodically, the master-keepalive message is not sent *in response to* the received client-keepalive message, and so the keepalive interval contained in the master-keepalive message is not being sent "in a response" to the client-keepalive message – notwithstanding the fact that the keepalive interval itself is computed based on information that was contained in the received client-keepalive message.

Because Adelman fails to teach sending the determined keepalive period "in a response" to the received keepalive message, Adelman again fails to anticipate claims 1, 4, 9, 14, 19, 25, and 26, and so the Examiner clearly erred in rejecting these claims.

McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 913-0001

Given the Examiner's clear error in rejecting independent claims 1, 4, 9, 14, 19, 25, and 26, and for the additional reasons set forth in Applicant's Response After Final, Applicant submits that the Examiner also clearly erred in rejecting dependent claims 2-3, 5-8, 11-13, and 15-16.

2. Clear Error in Rejecting Claims 20-24

Of these claims, claim 20 is independent and stands rejected as being allegedly obvious over Adelman in view of Harsch.

In rejecting claim 20, the Examiner relied on Adelman for largely the same reasons that the Examiner relied on Adelman with respect to the other independent claims. As discussed above, however, Adelman fails to expressly or inherently teach selecting a keepalive period based on a measure of network load. Further, Adelman fails to teach sending the determined keepalive period "in a response" to a received keepalive message, for use by the recipient client to determine when to send a next keepalive message as recited in claim 20. Still further, the Examiner has not asserted that Harsch makes up for these deficiencies of Adelman.

Because the combination of Adelman and Harsch does not disclose or suggest the invention recited in claim 20, and because the invention of claim 20 does not reasonably or logically follow from the limited teachings of Adelman and Harsch, Applicant submits that the Examiner has failed to establish *prima facie* obviousness of claim 20 and that the Examiner has therefore clearly erred in rejecting claim 20.

Given the Examiner's clear error in rejecting independent claim 20, Applicant submits that the Examiner also clearly erred in rejecting dependent claims 21-24.

McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 913-0001

3. Conclusion

For the foregoing reasons, Applicant submits that the Examiner has clearly erred in rejecting the claims. Therefore, Applicant respectfully requests the panel to withdraw the rejections and to direct that a notice of allowance be mailed.

Respectfully submitted,

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP

Date: February 15, 2008

By: /Lawrence H. Aaronson/
Lawrence H. Aaronson
Reg. No. 35,818

McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 913-0001